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SUPREME COURT, U.S.

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1979

NO. 79-6794

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DEWEY COLEMAN,

Petitioner,

-vs-

SENTENCE REVIEW DIVISION OF
THE SUPREME COURT OF MONTANA,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO
THE SUPREME COURT OF MONTANA

PETITIONER'S REPLY TO RESPONDENT'S BRIEF IN OPPOSITION

APPEARANCE:

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COUNSEL FOR PETITIONER

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PETITIONER'S REPLY TO RESPONDENT'S

BRIEF IN OPPOSITION

Petitioner Dewey Coleman respectfully submits this reply brief to respondent's brief in opposition.

It does not appear that the respondent disputes petitioner's material claims, except to contend that petitioner's "contention is based on the fact that the procedure for appellate review in the Montana capital-sentencing system was changed in 1977 to provide for automatic review by the Supreme Court of Montana in place of the review previously afforded by a division of the Supreme Court." (Resp. Br. 1), and to contend that Dobbert v. Florida, 432 U.S. 282 (1977), holds that "a procedural change" cannot violate the constitutional ex post facto clause.

This is not correct, as petitioner's application for certiorari clearly points out that the 1977 repeal of Section 95-2211, R.C.M., 1947, and as interpreted by the Montana Supreme Court, completely eliminated petitioner's

clear statutory right to a hearing before the Sentence Review Division of the Supreme Court of Montana on a request by him to mitigate the sentences imposed upon him, including a request that his death sentence be changed to some term of years. Before the repeal of this law, and at the time this petitioner committed his alleged crimes, and at the times he was tried and convicted thereon, and received his first sentences thereon, and following all appellate proceedings before the Montana Supreme Court, including a review by that Court of his sentences, this petitioner could then have, following a hearing before the Sentence Review Division, had his death sentence mitigated and changed to a term of years. This does not appear to be the "procedural change" contemplated in Dobbert.

As this appears to clearly violate the constitutional ex post facto restriction, this petitioner contends that the State of Montana should be ordered to provide him sentence review.

Respectfully submitted,

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August 25, 1980.